IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

**WRIT PETITION NO.1306 OF 2005**

Venco Research & Breeding Farm Ltd. )..PETITIONER

**Versus**

Subhash Bhagwan Gaikwad ).. RESPONDENT

Mr.C.U.Singh with Ms.Sonali Kunekar i/b.M/s.Haresh Mehta & Co. for the Petitioner.

**CORAM: SMT.NISHITA MHATRE, J.**

**DATED: 31ST MARCH 2005**

**P.C. :**

. This Petition challenges an order dated 29th January 2005 passed under Section 44 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "the Act") by the Member, Industrial Court, Satara, below Exhibit U-6 in Revision Application (ULP) No.34 of 2004.

2. The Respondent workman had filed Complaint (ULP) No.3 of 2004 before the Labour Court, Satara alleging unfair labour practice under Item 1 of Schedule IV of the Act. The Labour Court was of the view that the Complaint was required to be dismissed since the Respondent was not a "workman" as defined under Section 3(5) of the Act read with Section 2(s) of the Industrial Disputes Act, 1947. Revision Application (ULP) No.34 of 2004 was preferred by the Respondent workman against the

said order. The Respondent has sought amendment to the Revision Application by seeking leave to add one additional ground in the Revision Application by filing application at Exhibit U-6. The ground which the Respondent seeks to add is as follows :

> "That the learned Labour Court has failed to take into consideration that the applicant was suspended pending enquiry in accordance with the standing order. He was given a charge sheet in accordance with the standing orders. His services were terminated relying upon the findings of the enquiry officer, therefore the Company is not estopped from contending that the complainant is not a workman within the meaning of Section 3(5) of the MRTU & PULP Act. Now, it is a well settled position of law in the case of S.A. Sarang vs. W.G.Forge, that once the Company has held an enquiry in accordance with the standing orders and terminated his services relying upon the findings of the enquiry officer, the consistent & cumulative effect would be that he is a "Workman" and the Company is estopped from contending that he is not a workman."

3. The Industrial Court, Satara, after considering the reply filed by the Petitioner Company, has allowed the said application for amendment. According to the Industrial Court, this is purely a question of law which has been raised by the Respondent and, therefore, there is no harm in permitting the amendment to the Revision Application. The Industrial Court has not made any observations as to the merit of this additional ground which would be taken by the Respondent.

4. Aggrieved by this order of the Industrial Court, the Petitioner Company has preferred this Writ Petition

under Articles 226 and 227 of the Constitution of India.

5. Reliance is placed by Mr.C.U.Singh on behalf of the Petitioner on the judgments of the Apex Court in the case *J. Jermons* vs. *Aliammal and others*, **(1999) 7 SCC 382** and *Mukund Ltd.* vs. *Mukand Staff & Officers' Association*, **(2004) 10 SCC 460** to submit that estoppel which is sought to be pleaded by raising the additional ground is a mixed question of law and fact and, therefore, should not be permitted to be raised. He urges that the Petitioner would be greatly prejudicial if the amendment is allowed. The Labour Court had no opportunity to apply its mind to the issue sought to be raised. Therefore, submits the learned Counsel, such an issue regarding estoppel cannot be raised before the Revisional Court.

6. The Apex Court in the case of *J.Jermons* (supra), has held that the Court with a view to do complete justice between the parties may allow a party either to raise an additional ground or to take a new plea if the circumstances so justify. In the case of an additional ground, the Apex Court has observed that the case can be disposed of on the material on record but in a latter case the pleadings would have to be amended. Reasonable opportunity is required to be given to the other side to file further pleadings and adduce necessary evidence. The order of the Industrial Court has been passed on an application which is termed as an application for

amendment. However, on a closer reading of that application, it is obvious that an additional ground is being raised in the Revision Application based on the material on record. Therefore, the Industrial Court, in my view, has rightly permitted such an additional ground to be raised.

7. In the case of *Mukund* (supra), it has been held that the plea of estoppel cannot be accepted in the absence of pleadings. The order of the Industrial Court merely permits the additional ground to be raised. The Industrial Court is yet to decide the merits of the case in Revision. In my view, merely because a ground is raised and an amendment is allowed, it does not necessarily mean that the Industrial Court would accept the ground raised nor does it presuppose that the Respondent’s case, that he is a "workman", has been accepted by the Industrial Court. Both parties are always at liberty to make their submissions on not only the additional ground added by way of amendment but also on the other grounds taken in the Revision Application.

8. In my view, the Industrial Court has committed no error by allowing the amendment. There is no need to hazard a guess at this stage as to whether the Industrial Court would accept the additional ground raised by the Respondent and decide the Revision only on that ground. I see no reason to interfere. Petition rejected.

7. Office to issue authenticated copy of this order.